



Project description

Wider context and problem to be addressed.

One of the root causes of conflicts and violence in the Great Lakes Region lies in the discrepancies and the inconsistency in the application of the "rule of law." State justice mechanisms have been transformed into instruments of impunity and corruption, fuelling a vicious circle of violence (torture, iniquity, partiality, arbitrariness, etc.). Law is subjected to an overwhelming predominance of politics and "tribalism", reinforcing a culture of impunity in the region. Rather than fulfilling its role of social cohesion, justice has become a privilege of the friends of power to assure the domination of their own grouping. This socio-normative system, that one could coin "rule of law politics", is the primary factor in the discredit of state authority, leading to the development of rebellious movements and break up of the state and a reinforcement of communitarianism.

Justice, the mainstay of state authority, is the foundation of democracy, which guarantees rights and civil liberties and assures the pre-eminence of the law. As such, justice is the guardian of the rule of law. Justice is an essential vehicle for strengthening social cohesion, a factor active in the moralisation of society, the establishment of tranquility among its members, and a necessary condition for economic development and social progress. The rejection of state law in favour of the power and law of a local grouping (regional, ethnic, etc) was the cause of the vicious spiral of violence in the Great Lakes since 1993. In this context, the interpretation of justice becomes a tool in the struggle for hegemony---and a redefinition of the meaning of the concepts of State, Law, and Ethnicity.

This implies a much more complex relationship than between Law, State, and Individual. It is not the point of a single law, but rather "of a network of laws" that must be harmonised with society. In order to understand how the reconstruction of rule of law can contribute to the consolidation of peace in the Great lakes Region, it is imperative to understand the nature of the existing mechanisms that are used by the population to address conflict. There is a noticeable gap between current initiatives aimed at supporting the emergence of the rule of law and the conflicts they are intended to address.

The history of Rwanda since the 1994 genocide and the ongoing reconstruction of the social and economic fabric of society is testimony to the complex balance between justice and peace that exists in post-conflict societies. This balance represents one of biggest challenges and opportunities to attaining long term stability in the region. Difficulties related to the start of Gacaca trials in May 2005 resulted in the displacement of over 10,000 Rwandans to Burundi, and further fragilized reconciliation efforts on local, national, and regional level. Questions of justice need to walk a delicate line between addressing impunity and acknowledging local perspectives (les voix de la colline) of conflict dynamics.

Meanwhile, in the case of DRC, the population stands firm in an informal state. Confronted for years and years with the state resignation in the sectors coming within the responsibility of the public power, the population has created extensive informal structures to survive. Due to the crises and wars, they have elaborated, individually or within groups of tribal or other affinities, various means to survive, new ways to act and to do, new regulating behaviours. All in all, out of disappointment, out of instinct of self-preservation, out of spirit of revolt, or simply out of necessity or realism, individuals, authorities, populations had to settle for the research of concrete, new and not formalized solutions, supposed to respond to the crisis and to their needs. The development of informal structures has spread so far that even the administrative and judicial civil service have become "informalized". Civil servants have elaborated different mechanisms of privatisation of public administration, making the state administrative apparatus function according to their own rules, at almost all levels of civil service where state presence and support are missing. The judiciary in turn is "informalized". To tackle the shortcomings of formal justice, several types of parallel justice have been developed across the country.

The "rule of law" can only offer a guarantee of stability, sustainable peace, development and actual participative democracy if it opens up to the concept of legal pluralism. The reflection on plural state

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and legal pluralism defends the existence and circulation, within the society, of an order and various normative systems within the same polity. The state legal system is the most important of the various normative systems, but it is not the only one. The legitimacy of post-conflict rule of law in the region will depend on its capacity to integrate popular/customary practices into modern justice mechanisms.

Aim

This research proposal is grounded in a commitment to support and enhance the efforts of the broader peace-building community and justice practitioners to effectively put in place rule of law mechanisms that are context-specific and conflict sensitive. **Contributing to the legal and policy reform process now underway in the DRC, Burundi and Rwanda can be seen as a means of mitigating current and future conflict, in large part by using the legal and policy reform process as a tool for catalyzing public participation as well as regional exchange between former belligerents.** This implies meaningful participation of southern partners, and the creation of effective multi-stakeholder processes for information sharing and consultation. This research programme seeks to ensure long-term sustainability through active southern engagement and ownership.

This project aims to provide practical recommendations to international and national policymakers on the role of customary, informal and institutional justice mechanisms in Rwanda and the DRC. The project will examine questions of jurisdiction between formal and customary systems through a comparative analysis of the Gacaca system in Rwanda and informal mechanisms of adjudication in the Democratic Republic of Congo. A regional approach will serve to better understand the possible limits and difficulties of post-conflict justice structures, as well as to support a space for dialogue between policy makers from each country.

"I found the reports very useful in the sense that the analysis was professional. I also liked the consultative process leading up to the various recommendations."

Youssef Mahmoud, Director, Africa II Division, UN Department of Political Affairs

Objectives

1. Systematically map and evaluate customary and informal justice mechanisms in the case study areas of the DRC and Rwanda.
2. Undertake a comparative legal analysis of the institutional and informal links between customary and classical legal systems and integrate aspects of these mechanisms into modern judiciary systems < indicator of achievement- impact: thus strengthening the legitimacy of the latter by making it more sensitive to the needs and expectations of the population >

Research questions

1. Can customary justice systems and 'informal' grassroots justice initiatives respond to the aspirations of the population and their need for local level justice?
2. Under what conditions is it possible to formulate an effective articulation between customary and modern justice models to assure the sustainability of the Great Lakes peace process?

Review of previous work and how the project contributes to an improved understanding

To date, studies on the reform of the Congolese justice system have been largely carried out under the aegis of UNDP/Kinshasa and by doctoral students. These studies provide a general diagnosis of the current state of the Congolese judicial system, offer a series of recommendations relating to the reform of the legal and institutional framework as well as interventions to be elaborated at infrastructural and logistical levels. These studies consider the classical judicial system, with customary justice being dealt with only marginally. From this perspective, customary judicial systems are ultimately destined to disappear. However, only 8% of the Congolese population has access to any type of formal legal institution such as a local court, even fewer actually use the justice system, and outside of the large cities there are few qualified judges or other personnel, and the vast infrastructural problems make communication and transportation difficult, thus limiting the

FEWER-Africa supports early warning activities and promotes co-ordinated, early responses to violent conflict.

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possibility of a uniform application of national law that corresponds to minimal international standards. The current approach is highly problematic and may even fail to increase access to justice for a small minority of the Congolese population.¹

Research has been carried out by, *inter alia*, Professor Akele, looking at justice reform as well as the future of Congolese criminal law and informal law. This body of research has begun to look beyond the classic judiciary system, to proposing measures such as rehabilitating customary courts as formalised Town Courts and promoting certain informal structures whose effectiveness has been demonstrated in the field.²

In 2005, FEWER-Africa and the University of Kinshasa conducted an initial assessment of justice mechanisms in three areas of Kinshasa. While the sampling size is too small to base any conclusions on, the initial results suggest that current rule of law support programs function in quasi-complete ignorance of indigenous conflict resolution mechanisms. Programs are not evolutionary or adaptive and strive to achieve an "application of static legal technicalities," and support institutions which "lack legitimacy and often serve only a small portion of the population."³

The pilot assessment, entitled, "Rule of law and the Law of the land in Kinshasa" (www.fewer-international.org) indicates that the majority of disputes are not settled through the formal justice sector, as the "privatization" of the judicial system has replaced the "rule of law by the rule of the dollar." Corruption isn't even the appropriate nomination, the only way that bureaucrats are able to survive is to directly charge the population for the services rendered. Court cases are usually incredibly expensive (after all you have to not only pay the lawyer, but the judges, the clerks, the policemen, the inspectors, the secretaries, the paper, the pens, the transportation, etc....) the sentiment of the population was best summed up by one interview subject: "Its better to have an unfair deal than a fair trial." (: « Mieux vaut un mauvais accord qu'un bon procès. »)

Yet at the same time the alternative modes of dispute resolution in Kinshasa do not correspond to any one particular customary system. The pilot study offers this explanation: " Customary and Formal systems are simply treated like a Chinese Buffet. Whatever rules correspond best to the needs of the present situation are adopted." The two most common legal differences among Kinshasa residents were those involving property rights (title deeds) and family law (inheritance, marriage, child-support). In order to resolve these disputes, the parties used a third-party, which was either an elder of their ethnic community, or a local authority (but not a judge), such as a mayor, a commissioner, a police officer, an intelligence agent, or a state bureaucrat. (Out of twenty five eligible cases, only one was seen before a court.) The most surprising observation of the needs assessment was that state authorities enforced customary laws much more often than formal laws. In one case, an intelligence officer obliged a 15year old girl to marry. It is worth noting this is a state authority enforcing an aspect of customary law that not only is in violation of article 334 of Congolese Family law (Freedom of marriage), but also in relation to Article 1 of the Convention on the Rights of the Child, which has been ratified by the DRC. The initial assessment suggests a much more complex relationship between formal and informal mechanisms, which are simultaneously reinforcing each other while competing with each other. It is these dynamics that need to be better understood to understand the articulation between formal and informal systems.

1 See, for example Matadi Nenga Gamanda, "The Question of Judicial Power in the Democratic Republic of Congo. Contribution to a Theory of Reform", Preface from Michel Troper, Edition Droit et idées nouvelles, Kinshasa, 2001, 530 pages; "Final Report of Workshops for a Legal Framework of Justice in DRC", Kinshasa, novembre 2004; "Make Justice Work in Ituri", Human Rights Watch Briefing Document

2 See, for example, "Reform and Strengthening Programme of the Judiciary in the Democratic Republic of Congo. Diagnosis of the current situation", UNDP, Kinshasa, September-October 1999, 106 pages; "The Citizen-Righter of wrongs. Private Justice in the Rule of Law", Preface from Maître Ngele Masudi, Minister of Justice, Edition ODF, Kinshasa, December 2002, 141 pages; "The Justice Administration and Human Rights in the Democratic Republic of Congo: Case of the Cour d'ordre militaire (Military Court), UNDP Report - Office of the United Nations High Commission of Human Rights, Kinshasa, August 1999, 83 pages"; Which future for Criminal Law in the Democratic Republic of Congo ? in Congo-Afrique, n°350, December 2000, pp.591-615"; " Will the War of Laws happen ?" in Congo-Afrique, n°361, Kinshasa, January 2002, pp.46-61 etc.

3 USIP. Rule of Law Program, Project Customary law. It should be noted that this proposal and the pilot research that was conducted in Rwanda and DRC have resulted from a largely consultative process that began in September of 2005 with specialists from the Great Lakes Region, civil society, government representatives, and international agencies. Part of the inspiration for the project was the USIP rule of law program. Three needs assessments were conducted in Ituri, Rwanda, and Kinshasa between September 2005 and February 2006 to develop a research project that was grounded in knowledge of local realities. http://www.usip.org/ruleoflaw/projects/customary_law.html



Gacaca courts in Rwanda were piloted in June 2002 to address the problematic at the heart of Rwandan society – the reuniting of two diametrically opposed groups. Gacaca courts are intended to engender a process of collective retrospection of a troubled period in the country's history, which was neither experienced nor perceived in the same way by those involved. While there has been a vast amount of research conducted on reconciliation in post-genocide Rwanda, there is a notable gap in policy-orientated research (thus focused on future directions) which examines the interplay of the Gacaca jurisdictions and the ensemble of the justice apparatus. The majority of research that does examine this subject has been based on examining the distribution and repartition of competences according to the legal texts. Research conducted by Noel Twagaramungu, Penal Reform International, and the University of Butare have investigated this very sensitive, yet crucial aspect of Gacaca. A long term measure of success is related to its impact on public confidence in the judiciary as a key component of restoring the credibility of the state as an arbitrator of disputes. Some key elements to be highlighted are the genocide survivors' feeling that they have been forgotten by the process, the detainees' incorporation into civil life, and the non-judgment of "other crimes" within the Gacaca juridical framework.⁵⁵ Analysis will then look at the relationship between present-day Gacaca trials and the traditional Gacaca.

Traditionally, Gacaca was the first step of remedies as a Kinyarwanda proverb states it "*uruja kujya i Bwami, rubanza mu Bagabo*," which literally means "before one addresses the *King*, one has to submit the case to the wise men first."⁴ This goes to mark the position of Gacaca in the social and judicial framework in which it operates. On the one end of the framework, there were the levels of the family and the village. These were the domains of Gacaca in which the wise and old men ran the show. As heads of the families, these men fulfilled the roles of judge and arbitrator. The traditional Gacaca were under control of "*Inyangamugayo*" or *honest men*.⁵

In terms of structures, beyond the village functioned the higher judicial structures that were superior to Gacaca. Politically, Rwanda was headed by the *Mwami*, (King) who led a pyramidal system of chiefs (Abatware) and sub chiefs (Ibisonga). Since political and judicial powers were not separated, the *Mwami* and the chiefs also executed judicial powers. Certain historians specializing in 18th Century Rwanda have argued that Gacaca was not a justice system as such, but rather an opportunity to escape the State's justice system since the later was considered an "interfering of the executive power in the internal affairs"⁶. An assessment study conducted by FEWER-Africa in November 2005 found that this conception was quite different than the operation of Gacaca Jurisdictions in Kigali and Butare.⁷

"The FEWER team has successfully completed the design of a conflict early warning and response mechanism (CEWARN) for the Inter-governmental Authority on Development (IGAD). We can commend the FEWER team on their leadership and hard work in delivering this process. The collaborative participation by different governments and NGOs within CEWARN was historic and dispelled the myth that organisations of different institutional backgrounds cannot work well together."

Dr. Kipyego Cheluget, Former Chief, Conflict Prevention, Management and Resolution, Secretariat of the Inter-governmental Authority on Development. Diibouti.

Current critiques of the Gacaca process remark on its politicization and use to legitimate existing power to show that before colonialism all groups in Rwanda lived in harmony. The New Gacaca was advanced as a way of empowering people to participate actively and that this popular ownership would improve the operation of justice. The proponents were, furthermore, convinced that the new Gacaca would unify the Rwandans and eradicate the culture of impunity.⁸ This brings us to the

⁵⁵ According to the Minister of Justice, the crimes "committed" by the RPF could be tried through the normal process of the law, TPI Agence France Press.

⁴ UNHCHR (Gacaca, le droit coutumier, Rapport final de la première phase d'enquête sur le terrain, 1996a :8).

⁵ Similar to its traditional forefather, the judges in the new Gacaca jurisdictions are called *inyangamugayo*. Different is that in the new Gacaca *Inyangamugayo* are not those automatically believed to be wise due to their age and sex but ones elected by their fellows, be young or women.

⁶ Ntampaka (Le retour à la tradition dans le jugement du génocide rwandais, 2003:424)

⁷ The study is currently available in French on www.fewer-international.org

⁸ See Republic of Rwanda (Report of the reflection meetings held in the office of the president of the republic from May 1998 to March 1999 ,1999).



examination of the dangers of idealization of customary systems and the role of discourse (traditional participative African reconciliation mechanisms) in legal policy formulation. By advancing the emergence of “traditional” conflict resolution mechanisms we run the risk of these being appropriated by the power in place---as a tool of power, rather than equity.

The use of the concept of “Authenticity” of Mobutu in 1970’s Zaire/Congo offers an example of the appropriation of traditional mechanisms of conflict resolution. However, it was far more than an appropriated , but rather reinvented, with little regard for increasing access of the population to key services like justice. Could the same be said as to the “alternative mechanism of dispute resolution of Gacaca?” And what are the lessons to be learnt (if any) when formulating policy in the DRC to better link customary and classical legal systems?

Research Methodology

(i) Analytical Framework

Transitional Justice in Practice

Transitional justice, from the immediate post-war period, is a temporary justice by definition, bridging the gap between the end of war and the return to peace. Its objective is to put an end to litigation caused by the war in order to clean up the path to peace. It can enable or hinder the establishment of the rule of law. A country in transition offers opportunities for lessons learned in returning to the rule of law. The mechanisms of transitional justice, such as a Truth and Reconciliation Commissions, Gacaca and other informal mechanisms need to be continuously appraised in relation to building the rule of law. Specific consideration will be given to positive contributions made to the rule of law, its organisation and functioning principles and possible linkages with the classic justice mechanisms.

Differential and comparative prospects

In Rwanda and in DRC, impetus has been given to various initiatives and programmes, with the participation of the international community, in a bid to establish governance in accordance with the principles of the rule of law, i.e. functioning in a normative framework characterized by the supremacy of law, that binds everyone and whose main function is the protection of the public good and the guarantee of fundamental individual rights.

In Rwanda, very early, the government has felt the need of an adjustment of the rule of law, in the justice sector, between courts of modern law, overcrowded with genocide cases, and traditional jurisdictions, of popular type, named Gacaca. The doubt on the impartiality of the decisions of the latter jurisdictions has ended up creating a malaise that, as well as driving part of the population to go into exile, is also likely to reappraise justice as a component of the reestablishment of rule of law. However, the reappraisal is not facilitated by the political and human rights context in Rwanda that has developed since the following events: 1) the turbulent context of resignation and arrestation in 2000 of the former President Bizimungu and swearing in of Paul Kagame, 2) a 2001 law considerably restricting the activities of national and international NGOs⁹, 3) embedded limits of free association and expression in the 2003 Constitution,⁴ the pre-electoral context in 2003 characterized by an extremely narrow political space, 5) the approval in 2004 by the government of a Parliament report on “divisionism” leading to a fading freedom of expression as a mechanism to refute any opposition as well as to the exile of the accused persons and part of civil society, 6) a number of AI and HRW reports as a testament to human rights violations during the 2001-2003 period, i.e. illegal arrestations, disappearances.... and 7) the last military and political developments during 2004 and 2005¹⁰ in

⁹ According to the law, it is foreseen that the minister of Justice can suspend the activities of an organization when he deems that the activities threaten the law, the public order or the morality of the country. Law N° 20/2000 of 26 July 2000 in relation to the non-profit associations, Journal Officiel, N°7 of the 1st April 2001, 39-47.

¹⁰ The key regional events Rwanda was involved in were the following: in June 2004, Bukavu uprising; in August 2004, massacre at Gatumba camp; in August 2005, massacre in South Kivu and in December 2005 in North Kivu.

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relation to Rwandan international engagements vis-à-vis regional security, in Eastern DRC, as well as vis-à-vis the protection and promotion of civil and political human rights.

In the case of DRC, the unrest and risks of resistance to the reforms certainly reveal the difficulty in adjusting the construction or reconstruction process of rule of law in the post-war and transition context. At the same time, they point to the necessity to pay particular attention to method problems, in a view to lead to an institutional architecture in which people in their vast majority recognize themselves. Two of the milestones on the path to the end of the transition process will be the promulgation of the electoral law and the elections per se. The current pressure of the international community, especially the US and the EU, towards the tenure of a free and transparent ballot can only prove effective if the peace process is owned and not imposed. This window of opportunity will be not only be linked to the security calendar, especially in Eastern RDC to disarm militia bands, be they civil or military, but also to the struggle against impunity. Displacements are of utmost danger in this vast area and recent acts of aggression have been reported against human rights workers. The reestablishment of the rule of law in all part of DRC is made all the more vital, hence the expected design of a comprehensive institutional system.

The question of the conditions and modalities of an adjustment of the rule of law in Rwanda and DRC, through linkages between informal/customary justice and formal justice, induces three sets of hypotheses to be verified in a comparative study:

- i. The first one is the hypothesis of proximity of the customary and informal models: physical proximity (access facilities) and practical proximity (bone of contention covering family or neighbourhood disputes, land litigation and matters of small and medium debts).
- ii. The second one is the hypothesis of effectivity of the customary and informal models: actual settlement of the case to the litigants satisfaction, ability to maintain and restore domestic or civil peace as well as private or public order.
- iii. The third one is interested in the conditions and modalities of cooperation between these customary and informal models and the classic judiciary system. This is the hypothesis of mutual receptivity of both systems of justice and of their ability to cooperate.

A comparative study has to be based upon the data collected, treated and analysed to verify the three above mentioned hypotheses. Consequently, the research will look at Gacaca as it is organised and as it functions in urban areas, then in rural areas¹¹. Case studies in Rwanda will look at the functioning of Gacaca in Butare and Kigali, and in DRC at customary/informal jurisdictions functioning in Kinshasa, and the Ituri province.

(ii) Plan and research technique

Data gathering and analysis

The proposed project director is Pierre Akele Adu, Dean of the Faculty of Law at the University of Kinshasa and internationally renowned legal scholar. Peter Sampson, director of FEWER-Africa will work to provide all necessary support for the project. Noel Twagarimungu, former Executive Secretary of the League of Human Rights in the Great Lakes Region currently visiting Professor at Harvard, and Jean Marie Gasana, Africa Coordinator for the ISS will provide key regional expertise. CVs and writing examples are included with this proposal.

Using FEWER-Africa member organisations which have 'insider' access to decision makers, the project will conduct an initial mapping exercise of key individuals operating within the institutional and non-formel justice system, the policies related to rule of law, and the relationships and alliances

¹¹ A recent evaluation shows the growing gap between both urban and rural populations, the latter being not in the position of benefiting aid and cooperation, thus feeding into further social tensions. Tony Killick et al, The Implementation of the Memorandum of Understanding between the Governments of Rwanda and the Kingdom of the Netherlands: Report of Independent Monitors, mai 2005, p 21. In their annual 2005 & 2005, the Ligue des Droits de la Personne dans la région des Grands Lacs (LDGL) also emphasizes a 'progressive worrying regression' in relation to the exercise of socio-economics rights, July 2005, p 60.

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between different aspects of formal and informal decision-making structures. FEWER-Africa has been working with partners in Rwanda and the DRC since 1997, and places its top priority on assuring the safety of our network members as well as the appropriate actions for the specific contexts in each country. (“conflict sensitivity”)

An example of non-conflict sensitive programming in Rwanda.

After the 1994 Rwandan genocide, dozens of NGOs undertook psychosocial programmes driven by an assumption of mass “traumatized”, despite little familiarity with local culture and conditions. Western diagnostic systems and treatments were applied, with little relevance to Rwandan realities. Much of the distress that was diagnosed as trauma was in fact normal coping mechanisms in operation.

The programme is guided by several principles:

- To avoid duplication by drawing upon existing initiatives both within the region and in Europe and to provide a resource for the larger peace-building community supporting the emergence of a rule of law in the region. a
- To utilise existing strengths by linking with established ongoing research at the Great Lakes study Center at the University of Antwerp, the University of law of Kinshasa, the WEB dubois school at Harvard University.
- To support support of law in the region by practitioners through the provision of tools, resources and expertise.
- To provide targeted and specific policy recommendations to improve the linkage between transitionnel/ customary practices with institutional legal frameworks, widely distributed materials and user-friendly tools for effective use.
- To support inclusiveness and promote ownership by policy actors through active planning (participation in the elaboration of proposal, framework, and research methodology, as well as active engagement in the programme through the use of top regional experts.
- To support in –country capacity building of practitioners able to better confront problems “outside the box” of legal monism through the employment of research assistants to be paired with Regional and international experts.

Using the FEWER methodology, the project will survey key actors within legal institutions in each country. An abbreviated ‘methodology’ is given below:

- i. Documents, reports and other literature pertaining to judicial institutions’ activities and policies in Rwanda and DRC will be gathered and analysed. The findings will be corroborated with regional and international experts and specialists to assess the theoretical and practical linkages between formal institutions and informal/customary practices and to evaluate their effect.
- ii. A qualitative open-ended questionnaire will be devised focusing on the practices in each of the case study regions, and their needs vis-à-vis information and recommendations for action.
- iii. Key personnel within the governments, IGOs, and a sample of the general population will be contacted and surveyed in direct interviews in Rwanda and DRC.

Data will be gathered as follows

- Legislation, Case law, Doctrine, Inquiry data,
- Monitoring the functioning of Gacaca and of customary jurisdictions
- Interviews of the key justice personnel (judges, prosecutors, etc.)
- Interviews of effective persons under the jurisdiction of the courts
- Interviews of potential persons under the jurisdiction of the courts

Data analysis

- Inventory and evaluation of the mechanisms of Gacaca and of customary jurisdictions
- Identification of their challenges and opportunities

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- Identification of their abilities and intrinsic limits to positively deal with conflicts that are submitted to them
- Identification of their abilities to do linkages with the classic and reformed mechanisms of justice
- Identification of the conditions and modalities of these adjustments
- Evaluation of the new theoretical and practical prospects induced by these analyses

The mechanisms of Gacaca will be mapped out and evaluated with a focus on the supply-side dynamics of justice, notably through interviews with Gacaca judges. In the DRC, informal justice mechanisms will be looked at with a focus on the “demand side” through interviews with members of different communities. Three criteria will be used as an analytical framework: 1) proximity, 2) effectiveness (as perceived by Judges) 3) cooperation of both informal and formal justice mechanisms. Due to the sheer size of the DRC, the criteria of proximity (being close to the population, in favour with it, or being its favourite) will be given equal importance as the criteria of potential integration into the formal justice mechanisms. The challenges and opportunities will be identified particularly in relation to ability and limits in resolving and preventing conflict. The potential linkages with the classic and reformed justice mechanisms will be identified, together with the necessary conditions and modalities. The new theoretical and practical prospects of the outcome will also be investigated

(iii) FEWER methodology

The methodologies chosen for the implementation of this project have been previously successfully applied by FEWER members in the Great Lakes region, West Africa, the Caucasus, and Central Asia. The proposed methodology is based on substantial experience in the field of conflict prevention, and has resulted in the publication of methodological guidelines, now well known amongst the peace-building community.

FEWER’s methodology draws on the expertise of the network’s local and research members. Methodology training has been provided to donors, policy makers and NGOs world wide. The methodology has been used by USAID to prepare a country strategy for Zimbabwe and by officials in the Russian Government, among others. It has been field tested, and used for the production of FEWER early warning reports.

The methodology, in the form of a manual, provides for a total of eight steps for early warning and early response definition. The early warning section in the methodology links an indicator-based analysis, assessment of stakes and stakeholders, with peace making/building efforts. The response part looks at actors, available instruments, and conflict transformation processes at the local, regional and international levels. It is available through an electronic mail-back system (send an e-mail to info@fewer-international.org and put “manual.doc” (without quotation marks) in the subject heading to obtain the manual).

The methodological framework has been adapted for this project. The “mapping exercise” of different justice mechanisms will use a “stakeholder analysis”; and the *analysis of linkages* between formal and non-formal justice mechanisms is based on an “institutional capacities survey.” (see descriptions below)

Caveat for the proposed methodology:

Given the complexity of different competing formal and informal justice mechanisms in both countries, as well as the rapidly evolving situation, this type of “snapshot methodology” can be problematic. . The daily changes in relationships between different actors necessitate constant adjustments to the analysis. In such an environment it is difficult to systematically identify the policies, agendas, and alliances of all stakeholders without it leading to over-simplification. Thus the proposed methodology is presented as a dynamic product that will be modified to ensure that the resulting recommendations are policy relevant and “operationalisable” by decision-makers.

Stakeholder analysis

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Based on FEWER's conflict analysis methodology, the stakeholder analysis comprises a mapping of main actors/institutions, their activities, capacities, agendas, relations, and the implications for formal and informal justice mechanisms.

"Stakeholders" are those who can significantly influence legal policy formulation justice mechanisms or who are most affected by informal and formal justice mechanisms them. Among them, we can distinguish: (a) "primary stakeholders", who are directly part of the formal or informal justice activities within the different examples that are researched (eg: Judges, Gacaca judges, public prosecutors, plaintiffs, witnesses, victims, magistrates, Supreme Court officials) (b) "secondary stakeholders", who play an intermediary role and have the potential to affect the different judicial mechanisms (e.g. political parties, civil society, religious leaders); and (c) "external stakeholders", who are not directly involved, but are an interested party to the conflict (e.g. donor agencies, International Justice Mechanisms such as the ICC or ICTR).

	Activities	Relations	Agendas	Capacities	Implications for Justice mechanisms
Primary stakeholders					
Secondary stakeholders					
External stakeholders					

Survey of conflict prevention capacity.

The institutional conflict prevention capacity survey is an analysis of the specific decision-making procedures of formal and informal justice mechanisms, their capacity, proximity, perceived effectiveness (DRC). It will contain four elements defined through consultations with network members, legal specialists, government and non-governmental agencies:

- a) Identification of critical gaps between legal policy and local practice; for example the existence of widespread rape during the 1994 Rwandan genocide, the systematic raping of women is well documented. However, because rape is classified as a "category I crime", it is not within the jurisdiction of Gacaca. According to research conducted by FEWER-Africa up until August 2005, there has not been one confession of rape---thus robbing victims of closure and reinforcing mutual distrust among communities.
- b) analysis of legal policy on a local, national, and international level ;-including the ICTR, international convention on Genocide, ICC, customary jurisprudence, national statutes.
- c) Response priorities for policy reform.- Definition of the issues that are key to "conflict prevention" and that can be partly addressed by justice reform. An initial assessment identified the question of land rights and protection of minorities as priority legal issues, which have the potential to derail the peace process if not addressed.
- d) Key entry points of engagement to influence policy. Such as benchmarks for essential legislation related to elections or government decentralization, expiration of the mandate of the ICTR, and the International Conference on the Great Lakes

Conflict Prevention Capacity Framework			
Identification of Potential conflict factors	Response Directions	Entry points of engagement	Strategic priority issues



Workplan

Month	Activity	Location
Month 1	Research preparation and division of responsibilities. Identification and work with legal practitioners, scholars and key governmental and non-governmental stakeholders in the DRC	Kinshasa, Ituri, Rwanda, Nairobi, Rwanda
Month 2	Draft Paper for Preparation Regional Conference DRC Report preparation Rwanda Report preparation Ongoing field research & desk research	Kinshasa, Nairobi, Ituri
Month 3	Regional Research Regional paper. Beginning of full phase of the project.	Kinshasa, Ituri, Nairobi
Month 4	Ongoing field research & desk research	Kinshasa, Ituri, Rwanda
Month 5	Ongoing field research & desk research	Kinshasa, Ituri, Rwanda
Month 6	Ongoing field research & desk research	Kinshasa, Ituri, Rwanda
	Identification of 50 legal practitioners, scholars and key governmental and non-governmental stakeholders in Rwanda	Rwanda
	DRC Report compilation	Kinshasa, Ituri, Nairobi
	Deadline DRC Report	Kinshasa, Ituri, Nairobi
	Rwanda Report preparation	Rwanda, Nairobi
	Regional Report preparation	Kinshasa, Ituri, Rwanda, Nairobi
	Rwanda Report compilation	Rwanda, Nairobi
Month 9	Deadline Rwanda Report	Rwanda, Nairobi
	Deadline Regional Report	Kinshasa, Ituri, Rwanda, Nairobi
Month 10	Regional Conference	Nairobi
	Evaluation	Nairobi



Dissemination plan

Dissemination will take the form of electronic versions of summaries of each of the Case studies to 500 specialised practitioners in post-conflict rule of law mechanisms. These are part of a FEWER-Africa/FEWER-Eurasia database that was completed in September 2005. Abstracts of the three reports will be presented to specialised journals for publication for the wider legal community. Hard copy mailings will reach 100 legal practitioners, scholars, and key governmental and non-governmental stakeholders in the Region. This dissemination strategy will ensure that programme products are available to a combined audience of local, national, and international policy-makers. Through work in the region since 1997, FEWER-Africa has strategic access to international and regional policy-makers. Recently, FEWER-Africa has prepared briefings on the DRC for the UN Security Council, (2005) for the European Council on Demobilisation in the Great Lakes (2004) and has been working with the SRSB for the Internal Conference on the Great Lakes to provide input and technical support (2004-present)

Conference

A two-day expert meeting will be convened in Nairobi at the end of the project cycle in order to share research findings between researchers, development practitioners, and policy makers from Rwanda, DRC, and other countries in the region. This meeting will serve to bring together all research assistants and key researchers to identify lessons learnt as well as to increase regional exchange. A report of the conference findings will be made available to key policy-makers in the region. This conference will be enhanced by a network of Northern and Southern scholars and practitioners who will engage in a continued discourse on post-conflict rule of law and its organisational, normative and legal challenges in theory and practice.

Measuring goals and impact

Monitoring activities will ensure that the programme achieves its defined objectives within a prescribed timeframe and budget. Regular feedback on the progress of programme implementation and the problems faced during implementation will be requested. The monitoring arrangements will track resource acquisition and allocation, outputs and the delivery of services, and financial records.

The outcomes of the project will be assessed against the planned quantitative and qualitative indicators, as well as by undertaking a comparative study of selected organisations before and after the project. Additional tools include a participant evaluation to be completed at the end of the conference that will be collated and summarised. All monitoring information is fed into a databank for future projects, which is shared with the broader peace-building community to promote good practice, and to avoid duplication of efforts. An external evaluation is undertaken at the end of the project.